

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE CASTILLO, on behalf of himself and all others
similarly situated,

09 CV 3516 (CPS)(SMG)

Plaintiff,

ANSWER

-against-

ERICA L. BRACHFELD, A Professional Corporation
d/b/a LAW OFFICES OF BRACHFELD &
ASSOCIATES; THE BRACHFELD LAW GROUP, A
Professional Corporation; ERICA L. BRACHFELD a/k/a
ERICA L. SHUBIN; and MARTIN BRACHFELD a/k/a
MARTY BRACHFELD,

Defendants.

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Defendants ERICA L. BRACHFELD, A Professional Corporation d/b/a LAW
OFFICES OF BRACHFELD & ASSOCIATES; THE BRACHFELD LAW GROUP, A
Professional Corporation; ERICA L. BRACHFELD a/k/a ERICA L. SHUBIN; and
MARTIN BRACHFELD a/k/a MARTY BRACHFELD (hereinafter referred to as
“Answering Defendants”), by and through their attorneys, WILSON, ELSER,
MOSKOWITZ, EDELMAN & DICKER LLP, hereby answer Plaintiff’s Complaint as
follows:

Introduction

1. Neither admit nor deny the allegations set forth in paragraph “1” of the
Complaint to the extent that they call for a legal conclusion and reserve all questions of
law to the Court for determination. To the extent that the allegations are deemed factual,
they are denied.

Jurisdiction and Venue

2. Neither admit nor deny the allegations set forth in paragraph “2” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

3. Neither admit nor deny the allegations set forth in paragraph “3” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

4. Neither admit nor deny the allegations set forth in paragraph “4” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

5. Neither admit nor deny the allegations set forth in paragraph “5” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

Parties

6. Deny having knowledge or information sufficient to form a belief as to allegations set forth in paragraph “6” of the Complaint.

7. Neither admit nor deny the allegations set forth in paragraph “7” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.

8. Admit the allegations set forth in paragraph "8" of the Complaint.
9. Admit the allegations set forth in paragraph "9" of the Complaint.
10. Deny the allegations set forth in paragraph "10" of the Complaint.
11. Admit the allegations set forth in paragraph "11" of the Complaint.
12. Neither admit nor deny the allegations set forth in paragraph "12" of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.
13. Neither admit nor deny the allegations set forth in paragraph "13" of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.
14. Admit the allegations set forth in paragraph "14" of the Complaint.
15. Admit the allegations set forth in paragraph "15" of the Complaint.
16. Deny the allegations set forth in paragraph "16" of the Complaint.
17. Admit the allegations set forth in paragraph "17" of the Complaint.
18. Neither admit nor deny the allegations set forth in paragraph "18" of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.
19. Neither admit nor deny the allegations set forth in paragraph "19" of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.
20. Admit the allegations set forth in paragraph "20" of the Complaint.
21. Admit the allegations set forth in paragraph "21" of the Complaint.

22. Admit the allegations set forth in paragraph "22" of the Complaint to the limited extent that Erica L. Brachfeld is partially responsible for devising and implementing the debt-collection procedures of ELPAPC and BLG (as such terms are defined in the Complaint).

23. Deny the allegations set forth in paragraph "23" of the Complaint

24. Admit the allegations set forth in paragraph "24" of the Complaint

25. Deny the allegations set forth in paragraph "25" of the Complaint.

26. Deny the allegations set forth in paragraph "26" of the Complaint

27. Neither admit nor deny the allegations set forth in paragraph "27" of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination..

28. Neither admit nor deny the allegations set forth in paragraph "28" of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.

29. Deny the allegations set forth in paragraph "29" of the Complaint.

30. Admit the allegations set forth in paragraph "30" of the Complaint.

31. Deny the allegations set forth in paragraph "31" of the Complaint.

32. Deny the allegations set forth in paragraph "32" of the Complaint.

33. Deny the allegations set forth in paragraph "33" of the Complaint.

34. Deny the allegations set forth in paragraph "34" of the Complaint.

35. Deny the allegations set forth in paragraph "35" of the Complaint.

36. Neither admit nor deny the allegations set forth in paragraph “36” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.

37. Neither admit nor deny the allegations set forth in paragraph “37” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.

38. Deny the allegations set forth in paragraph “38” of the Complaint.

39. Deny the allegations set forth in paragraph “39” of the Complaint.

***Factual Allegations Regarding Plaintiff's
Receipt of a Form Collection Letter***

40. Deny the allegations set forth in paragraph “40” of the Complaint.

41. Neither admit nor deny the allegations set forth in paragraph “41” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.

42. Deny the allegations set forth in paragraph “42” of the Complaint.

43. Deny having knowledge or information sufficient to form a belief as to allegations set forth in paragraph “43” of the Complaint.

44. Deny the allegations set forth in paragraph “44” of the Complaint.

45. Deny the allegations set forth in paragraph “45” of the Complaint.

46. Admit the allegations set forth in paragraph “46” of the Complaint.

47. Deny the allegations set forth in paragraph “47” of the Complaint.

Class Action Allegations

48. Neither admit nor deny the allegations set forth in paragraph “48 (a) and (b)” of the Complaint to the extent that they call for a legal conclusion and reserve all

questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

49. Neither admit nor deny the allegations set forth in paragraph “49 (a) through (e)” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination.

50. Neither admit nor deny the allegations set forth in paragraph “50” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

51. Deny having knowledge or information sufficient to form a belief as to allegations set forth in paragraph “51” of the Complaint.

52. Deny having knowledge or information sufficient to form a belief as to allegations set forth in paragraph “52” of the Complaint.

53. Deny having knowledge or information sufficient to form a belief as to allegations set forth in paragraph “53” of the Complaint.

COUNT I

Violations of §§ 1692 e, f, and g of the Fair Debt Collection Practices Act, and their subsections

54. Answering Defendants repeat and incorporate herein by reference, their responses to each of the previous paragraphs numbered “1” through “53”.

55. Deny having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “55” of the Complaint.

56. Neither admit nor deny the allegations set forth in paragraph “56” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of

law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

57. Neither admit nor deny the allegations set forth in paragraph “57” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

58. Neither admit nor deny the allegations set forth in paragraph “58” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

59. Neither admit nor deny the allegations set forth in paragraph “59” of the Complaint to the extent that they call for a legal conclusion and reserve all questions of law to the Court for determination. To the extent that the allegations are deemed factual, they are denied.

60. Deny the allegations set forth in paragraph “60” of the Complaint.

61. Deny the allegations set forth in paragraph “61” of the Complaint.

62. Deny the allegations set forth in paragraph “62” of the Complaint.

63. Deny the allegations set forth in paragraph “63” of the Complaint.

64. Deny the allegations set forth in paragraph “64” of the Complaint.

Demand for Jury Trial

65. Deny the allegations set forth in paragraph “65” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

66. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

67. Plaintiff has suffered no actual damages.

AS FOR A THIRD AFFIRMATIVE DEFENSE

68. If a violation of the Fair Debt Collection Practices Act is determined to have occurred, the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably calculated to avoid such error.

WHEREFORE, Answering Defendants demand judgment dismissing the Complaint and each and every cause of action alleged therein and for such other, further and different relief as to this Court may seem just and proper, including costs and attorney's fees.

Dated: New York, New York
October 29, 2009

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN &
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